UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|---|---|---|---|
| 10/626,635 | 07/25/2003 | Patrick Gennesson | 713-391A | 9618 |

7590 06/22/2005

LOWE HAUPTMAN GILMAN & BERNER, LLP
Suite 300
1700 Diagonal Road
Alexandria, VA 22314

| EXAMINER | |
|---|---|
| EASHOO, MARK | |

| ART UNIT | PAPER NUMBER |
|---|---|
| 1732 | |

DATE MAILED: 06/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| Office Action Summary | Application No. | Applicant(s) | |
|---|---|---|---|
| | 10/626,635 | GENNESSON, PATRICK | |
| | Examiner | Art Unit | |
| | Mark Eashoo, Ph.D. | 1732 | |

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)☒ Responsive to communication(s) filed on *23 December 2003*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)☒ Claim(s) *1-16* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) _____ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

**Application Papers**

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☒ Certified copies of the priority documents have been received in Application No. 09/779,442.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *(2a.)*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dengler (US Pat. 3,076,232) in view of Barry et al. (US Pat. 5,241,030).

Dengler teaches the basic claimed process of making a plastic stretch film, comprising: taking/providing a polyethylene material (1:1-2:70); stretching the film in two successive steps wherein the first stretch step is greater than the stretch step (examples 1-3); a stretching temperature of about 50°C to the melting temperature of the film (1:69-2:70); and relaxing the stretched film to about 15-23% (3:9-15, 5:40-50); and winding the relaxed film into a roll traveling at the same speed as the relaxation rolls(3:10-21). It is noted that Dengler teaches that polyethylene melts of 80-105°C (2:60-65) and various draw ratios (5:20-50). It is implicit that a draw ratio of 1.95 is substantially similar to a draw ratio of 2. Furthermore, it is implicit that the relaxation step of 15-23%, which occurs by passing the film over rollers, requires a roller speed of 15-23% (ie. 0.85-0.77) less than a prior roller.

Dengler does not teach a blown film of LLDPE. However, Barry et al. teaches a blown film of LLDPE (1:34-45, 5:24-35, and 6:49-58). It is noted that the courts have held that the selection of a known material based on its suitability for its intended use supports a prima facie case of obviousness. *Sinclair & Carroll Co. v. Interchemical Corp.*, 65 USPQ 297 (1945). In the present case, Barry et al. teaches blown LLDPE films are known to be oriented and used for wrapping articles. Therefore a person of ordinary skill in the art would have found it obvious to utilize a blown LLDPE film in Dengler, because suggests that such films are useful for substantially the same purpose as the films of Dengler (1:5-20).

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See attached form PTO-892.

### *Double Patenting*

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982);

*In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 15 and 16 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 7, respectively of U.S. Patent No. 6,616,883 in view of Dengler (US Pat. 3,076,232).

Claims 1 and 7 of U.S. Patent No. 6,616,883 teach all the limitations of instant claims 14 and 15 except for the film being at a temperature of between 50-100°C. Nonetheless, Dengler teaches the film being at a temperature of between 50-100°C (1:69-2:70). Dengler and U.S. Patent No. 6,616,883 are combinable because they are from the same field of endeavor, namely, orienting polyethylene films. At the time of invention a person of ordinary skill in the art would have found it obvious to have heated the film to a temperature of between 50-100°C, as taught by Dengler, in the process of either claim 1 or 7 of U.S. Patent No. 6,616,883, and would have been motivated to do so because Dengler suggests that drawing/stretching at such temperature provides better heat sealing properties for the film.

Claims 1-14 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-14, respectively of U.S. Patent No. 6,616,883

Claims 1-14 of U.S. Patent No. 6,616,883 teach all the limitations of instant claims. Claims 1-14 of U.S. Patent No. 6,616,883 also teach limitation directed to a specific material, LLDPE. As such, claims 1-14 of U.S. Patent No. 6,616,883 are effectively a species of the instant claims directed to the genus. Since the later/instant claims are generic to a substantial part of the scope of an earlier/parent claim and since the genus-species relationship is present and makes them patentably indistinct, the earlier species claims anticipate the later genus claims. *Geneva Pharmaceuticals Inc. v. GlaxoSmithKline PLC*, 68 USPQ2d 1865 (CA FC 2003).

***Correspondence***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Eashoo, Ph.D. whose telephone number is (571) 272-1197. The examiner can normally be reached on 7am-3pm EST, Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Colaianni can be reached on (571) 272-1196. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Mark Eashoo, Ph.D.
Primary Examiner
Art Unit 1732

Sunday, June 19, 2005
me

19/Jun/05